

## **Board Administration and Regulatory Coordination Unit**

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### **Division 3. Air Resources Board**

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### **Chapter 1. Air Resources Board**

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### **Subchapter 1.25. Administrative Procedures–Hearings**

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### **Article 3. Administrative Hearing Procedures for Petitions for Review of Complaints**

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### **Subarticle 7. Hearings**

#### **§ 60065.33. Conduct of Hearing.**

(a) The hearing shall be presided over by a hearing officer who shall conduct a fair and impartial hearing in which each party has a reasonable opportunity to be heard and to present evidence.

(b) The hearing shall be conducted in the English language.

(c) Subject to reasonable limitations that may be imposed by the hearing officer, each party to the proceeding shall have the right to:

(1) Call and examine witnesses;

(2) Introduce exhibits;

(3) Question opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examinations;

(4) Impeach any witness regardless of which party first called the witness to testify; and

(5) Call and examine an opposing party as if under cross-examination, even if that party does not testify on his or her own behalf.

(d) Burden of Going Forth.

(1) The complainant shall have the initial burden of presenting evidence in support of issuance of the complaint, the requested penalty, and any other material that is pertinent to the issues to be determined by the hearing officer.

(2) At the conclusion of complainant's case-in-chief, the respondent has the burden of presenting any defense to the allegations set forth in the complaint and any response or evidence with respect to the appropriate relief. The respondent has the right to examine, respond to, or rebut the allegations of the complaint and any proffered evidence and material. The respondent may offer any documents, testimony, or other exculpatory evidence which bears on appropriate issues, or may be relevant to the penalty amount.

(3) At the close of respondent's presentation of evidence, the parties respectively have the right to introduce rebuttal evidence that is necessary to resolve disputed issues of material fact, subject to any limits imposed by the hearing officer pursuant to subparagraph (e)(1) below.

(e) The hearing officer may:

(1) Limit the number of witnesses and the scope and extent of any direct examination, cross-examination, or rebuttal testimony, as necessary, to protect the interests of justice and conduct a reasonably expeditious hearing;

(2) Require the authentication of any written exhibit or statement;

(3) Call and examine a party or witness and may, on his or her own motion, admit any relevant and material evidence;

(4) Exclude persons whose conduct impedes the orderly conduct of the hearing;

(5) Restrict attendance because of the physical limitations of the hearing facility; or

(6) Take other action to promote due process or the orderly conduct of the hearing.

(f) The taking of evidence in a hearing shall be controlled by the hearing officer in the manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to taking evidence, the hearing officer shall define the issues and the order in which evidence will be received.

(g) Each matter in controversy shall be decided by the hearing officer upon a preponderance of the evidence.

(h) Hearings shall be recorded electronically. The recording made by the Administrative Hearing Office shall be the official recording of the hearing.

(1) A verbatim transcript of the official recording will not normally be prepared, but may be ordered by the hearing officer if deemed necessary to permit a full and fair review and resolution of the case. If not so ordered by the hearing officer, a party may, at its own expense, request that a verbatim transcript be made. The party making the request shall provide one copy to the hearing officer and one copy to every other party.

(2) The official recording of the hearing and transcript of the recording, together with all written submissions made by the parties, shall become part of the administrative record for the proceeding.

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NOTE: Authority cited: Sections 39600, 39601, 43028 and 43031(a), Health and Safety Code. Reference: *Mathews v. Eldridge*, 424 U.S. 319 (1976); and Sections 43028 and 43031(a), Health and Safety Code.

REFERENCE